

1 DEWEY & LEBOEUF LLP
2 Barbara A. Caulfield (SBN 108999)
3 E-mail: bcaulfield@dl.com
4 Peter E. Root (SBN 142348)
5 E-mail: proot@dl.com
6 1950 University Avenue, Suite 500
7 East Palo Alto, California 94303
8 Telephone: (650) 845-7000
9 Facsimile: (650) 845-7333

10
11 Attorneys for
12 Brocade Communications Systems, Inc.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MARY E. BARBOUR AS TRUSTEE FOR THE)
MARY E. BARBOUR FAMILY TRUST ONE,) Case No. C 08-02029 CRB
Derivatively On Behalf of BROCADE)
COMMUNICATIONS SYSTEMS, INC.,) STIPULATION
Plaintiff,)
vs.)
GREGORY L. REYES, *et al.*,)
Defendants,)
-and-)
BROCADE COMMUNICATIONS SYSTEMS,)
INC., a Delaware corporation,)
Nominal Defendant.)

1 WHEREAS, on August 2, 2008, Brocade Communications Systems, Inc.
2 (“Brocade”), through the Special Litigation Committee of its Board of Directors (“SLC”), filed a
3 motion seeking to dismiss the Amended Complaint pursuant to Federal Rules of Civil Procedures
4 12(b) and 23.1, or, in the alternative, to realign the parties to re-designate Brocade as the sole party-
5 plaintiff, dismiss the shareholder plaintiff, and stay proceedings in this action pending further
6 developments in (i) a related, earlier-filed action in this Court captioned *In re Brocade*
7 *Communications Systems, Inc. Derivative Litigation*, No. C05-02233 CRB (the “Lead Action”), in
8 which Brocade (through the SLC) has filed a Second Amended Complaint asserting direct claims
9 arising out of the same matters at issue in this case, and (ii) other related proceedings; and

10 WHEREAS, on August 3, 2008, Brocade filed a motion to realign the parties and stay
11 proceedings in another related action pending in the Superior Court for the State of California, Santa
12 Clara County, captioned *In re Brocade Communications Systems, Inc. Derivative Litigation*, No.
13 1:05CV041683 (“State Action”); and

14 WHEREAS, plaintiff’s counsel, Johnson Bottini, LLP, has engaged in substantial
15 legal analysis and negotiations and discussions with counsel for the SLC regarding Brocade’s
16 motion and the relief sought therein; and

17 WHEREAS, plaintiff’s counsel has had the opportunity to review the SLC’s 127-page
18 Resolution setting forth the findings of its investigation into the derivative claims asserted in this
19 action and other related derivative actions; and

20 WHEREAS, as a result of the aforementioned discussions, plaintiff’s counsel’s
21 review of the Resolution and the Second Amended Complaint, and a review and discussion of the
22 process by which the SLC conducted its investigation and of the evidence that the SLC considered,
23 plaintiff supports Brocade’s motion to realign and is satisfied with the SLC’s independence and good
24 faith and the reasonableness of its investigation; and

25 WHEREAS, plaintiff’s counsel has entered into an engagement letter (the
26 “Engagement Agreement”) with Brocade (acting through the SLC) to assist in the prosecution of

Dewey & LeBoeuf LLP
1950 University Avenue
Suite 500
East Palo Alto, CA, 94303-2225,

1 this case and the related derivative litigations as co-counsel to the SLC, which agreement has been
2 submitted to the Court under seal for its *in camera* review; and

3 WHEREAS, pursuant to a stipulation between plaintiff's counsel and Brocade's
4 counsel (reporting to the SLC) (among others), the Court in the State Action entered an order on
5 August 12, 2008, realigning the parties in that action, substituting Brocade as the sole party-plaintiff,
6 dismissing the shareholder plaintiff and staying the State Action pending further developments in the
7 Lead Action and other related proceedings; and

8 WHEREAS, the individual defendants in the State Action were provided with notice
9 and an opportunity to object to the realignment and stay in that action; and

10 WHEREAS, on August 15, 2008, the Court in the State Action overruled the
11 objection submitted by two individual defendants in that case (who are also defendants in the Lead
12 Action) and reaffirmed its previous order granting realignment and staying the case without
13 prejudice to the objecting defendants' right to move to vacate the stay; and

14 WHEREAS, a stipulation to realignment of the parties is being entered into between
15 and among Brocade and the shareholder plaintiffs in the Lead Action; and

16 WHEREAS, plaintiff's counsel and counsel for the SLC are prepared to stipulate that
17 the parties to this action should be realigned, with Brocade re-designated as the sole party-plaintiff
18 and substituted for the shareholder plaintiff, that the shareholder plaintiff should be dismissed, and
19 that this action should be stayed pending further developments in the Lead Action and other related
20 proceedings;

21 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED that:

22 1. The parties to this action should be realigned, with Brocade re-designated as
23 the sole party-plaintiff and substituted for the shareholder plaintiff.

24 2. The shareholder plaintiff should be dismissed from this action.

25 3. This action should be stayed pending further developments in the Lead Action
26 and other related proceedings.

1 4. The parties to this action shall submit to the Court, together with this
2 Stipulation, a [Proposed] Order effectuating the foregoing relief and requesting that the Court
3 accelerate from September 19, 2008 to August 21, 2008 (the date of the next case management
4 conference) the return date for Brocade's pending motion to dismiss the Amended Complaint or, in
5 the alternative, to realign the parties and stay proceedings.

6 DATED: August 19, 2008

JOHNSON BOTTINI, LLP

7 By: /s/ Frank A. Bottini
8 Frank A. Bottini
9 655 W. Broadway
10 Suite 1400
11 San Diego, CA 92101
12 Telephone: (619) 230-0063
13 Facsimile: (619) 233-5535

14 *Counsel for Plaintiff*

15 DATED: August 19, 2008

DEWEY & LEBOEUF LLP

16 By: /s/ Barbara A. Caulfield
17 Barbara A. Caulfield
18 Peter E. Root
19 1950 University Avenue, Suite 500
20 East Palo Alto, California 94303
21 Telephone: (650) 845-7000
22 Facsimile: (650) 845-7333

23 *Attorneys for Nominal Defendant Brocade*
24 *Communications Systems, Inc.*

Dewey & LeBoeuf LLP
1950 University Avenue
Suite 500
East Palo Alto, CA, 94303-2225,

1
2 **ATTESTATION PURSUANT TO GENERAL ORDER 45**

3 I, Barbara A. Caulfield, attest that the concurrence in the filing of this document has
4 been obtained from each of the other signatories. I declare under penalty of perjury under the laws
5 of the United States of America that the foregoing is true and correct. Executed this 19th day of
6 August, 2008, at East Palo Alto, California.

7
8 /s/ Barbara A. Caulfield
9 Barbara A. Caulfield

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Dewey & LeBoeuf LLP
1950 University Avenue
Suite 500
East Palo Alto, CA, 94303-2225,